U. S. DISTRICT COURT, W. D. PA.

(June 26, 1972)

PROCEEDINGS

THE COURT: Good morning, gentlemen.

This is the time set for argument on motion for a new trial or acquittal and arrest of judgment.

Do any of the defendant's counsel wish to argue at this point?

(No reply).

THE COURT: Motions have been filed by all parties and no briefs have been filed by counsel, none having been requested by the Court.

I think it should be made clear on the record that the reason for this is the type of case this is and the type of reasons averred for the grant of a new trial.

During the trial of this case, there were extensive conferences between counsel and the Court. Counsel furnished the Court with various cases which their research had uncovered and most of the disputed points of law were thoroughly argued during the trial itself and therefore I think that it is in the interests of justice and speeding up the ultimate end of these cases that we not delay matters any further by going over the same points that were thoroughly argued during the trial itself.

Since the proceedings were under two important new Acts of Congress, that pertaining to wiretapping and that pertaining to large scale gambling under Section 1955, there was little in the way of precedent to guide either the Court or counsel. Therefore, choices had to be made and there has been nothing happen since the time of trial which would indicate that the choices should have been different than what they were.

For example, the defendants took exception to definitions of the words, "conduct, lay-off betting, business," as they pertained to the Section 1955 violation.

In addition, there was exception granted as to the lack of necessity of scienter being shown. The case of the *United States* vs. *Reale,* which, incidentally, was argued during the trial of Iannelli, has since been decided by the Court of Appeals for the Circuit and affirmed generally the charge given by Judge Weber on which I relied for much of my definitions in this case.

The exceptions taken to the testimony of Special Agent Boyd, who testified as an expert, while I feel his testimony was properly for the Jury and see no reason to change my ruling as to his testimony, there is one particular point, though, which is raised in the reasons for new trial assigned by Defendant Iannelli, and that is to the interrogation of Juror No. 4, which was done in camera. I am somewhat puzzled by this being assigned as a reason for a new trial, because the in camera discussion was at the suggestion of and with the approval of all defense counsel and it was to ease the minds of defense counsel to determine if this juror had discussed his possibly unfriendly attitude toward one of Mr. McLaughlin's partners as a result of a civil case in which Juror No. 4 had been represented by this particular lawyer.

The juror was excused because of the possibility that he might have some bias against Mr. McLaughlin or his firm. As it turned out during the in camera discussion, the juror had not even associated Mr. McLaughlin in his mind with his former lawyer and therefore, no harm was done.

However, because during the lengthy trial, he might later make such a connection, it was decided, with the consent of all counsel, this juror should be excused and an alternate should be seated. This matter was called to the attention of the Court by Mr. McLaughlin, and very properly so, I

might add, but it was for the benefit of his client that the juror was excused.

Therefore, I do not feel this is a valid reason for the granting of a new trial.

The other in camera meeting with counsel for the prosecution has been thoroughly explored with defense counsel and the record made for appellate review. At this time, I do not feel the course pursued was error or that any other feasible alternative was open to the Court at that time.

Again, the pretrial publicity, I think, was adequately discussed before the Jury was selected. The voir dire proceedings disclosed no prejudice to the defendants and I do not consider that any valid reason for new trial.

The exceptions taken by the Defendant Scolieri to the definition of "gross revenue," and "aiding and abetting," in the charge, again I feel fall in the same category as the other definitions I referred and ultimately will be resolved by an Appellate Court.

The use of the voice identification is a question which has some authority for the action taken by the Court. I referred counsel to proposed rules of evidence for the Federal Courts No. 9-01, which seems to codify existing law and I also call counsel's attention to the *United States vs. Alper,* decided by the Court of Appeals of this Circuit during the past few months, of which I believe we had some discussion during the trial.

I would also call counsel's attention to the collection of cases 31-A Corpus Juris Secundum, Section 188. Similarly, the evidence relating to the Northeast Recorder, I think, is properly admitted and a matter for the Jury to decide.

The question of duplicity again was raised. This is at it pertained to the conspiracy count and Section 1955 count. Again, this was thoroughly considered by the Court and ably argued by counsel.

I do not agree with the opinion on the Greenberg case on which counsel relied, and concluded after my own research on the matter in other cases, since there were different elements involved in each count, different numbers of persons could be involved in each count, and for this reason, the doctrine cited in the Greenberg case was not applicable.

Again, the obtaining of voice exemplars, which is alleged to have been done and unconstitutional matter, I find not to be such as to justify any reversal and I find the procedure was not unconstitutional.

Similarly, the refusal to suppress physical evidence taken from the homes of several defendants, I do not believe constituted error. The *Blank* case relied on by the defendants handed down by the Northern District of Ohio, has since been reversed by the Court of Appeals for that Circuit. This leaves a seeming conflict between circuits, between the one that decided the *Philpott* case and the one that reversed the *Blank* case.

I think the record should also indicate that the most current of the Criminal Law Reporter in the case *United States vs. Harris,* decided by the Court of Appeals for the Fifth Circuit, on May 22, 1972—that is found at 11 Criminal Law Reporter, 2246—that Court found that Section 1955 was constitutional.

To my knowledge, this is the only Appellate Court which has yet considered the matter.

I have considered all the other motions raised by the defendants in the motions for new trial, and for other post-trial relief and find them wanting.

The record should indicate, however, the denial of these motions from the bench without oral argument should not be taken as indicating lack of consideration by the Court of the points raised. It is simply that these matters were

thoroughly argued and considered during the course of the trial and that it would not serve any further purpose by arguing at this time.

I think, similarly, little would be served except delay by the preparation of a lengthy opinion which would restate, really, what was given to the record during the trial and which is included in the opinions filed on the preliminary matters in this case.

All motions of the defendants therefore are denied.

We will now proceed to sentencing.

(The defendants were sentenced.)

I Hereby Certify that the foregoing is a true and correct transcript of the proceedings had in the captioned matter.